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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
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04-CV-02467-CMP

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT WASHINGTON AT SEATTLE

BONITA K. BIERY, a single woman,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

THE BOEING COMPANY EMPLOYEE  
HEALTH AND WELFARE BENEFIT PLAN,  
The Plan Administrator, a Washington  
Corporation; and AETNA LIFE INSURANCE  
COMPANY, a foreign corporation,

Defendants.

Cause No.

**C04-2467 JLR**

**COMPLAINT - CLASS ACTION**

TO: DEFENDANTS

*The Plaintiffs, by and through their attorneys, Frederick P. Langer, Nelson, Tyler  
Langer, P.L.L.C., based upon information and belief, allege the following:*

**I. JURISDICTION AND VENUE**

1. The Plaintiff, BONITA BIERY, is a resident of the State of Washington.
2. Plaintiff Biery represents a large group of claimants who received typical  
treatment from Defendants.

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LAW OFFICES OF  
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1           3.     The Defendant, The Boeing Company Employee Health And Welfare Benefit  
2 Plan (hereinafter "Boeing"), is a domestic corporation doing business in the State of  
3 Washington. At all times relevant herein, Defendant was the Plan Administrator and/or  
4 Sponsor for a Short-Term Disability Plan and a Long-Term Disability Plan offered to Boeing  
5 Company employees (hereinafter collectively described as "Plaintiffs").

6           4.     The Defendant, Aetna Life Insurance Company, by and through Aetna US  
7 Healthcare (hereinafter "Aetna"), is a foreign corporation doing business in the State of  
8 Washington, whose primary place of business is located in the State of Connecticut. At all  
9 times relevant herein, Defendant Boeing contracted with Defendant Aetna as to the  
10 determination, claims administration and/or payment of disability benefits to Plaintiffs.

11           5.     The Plaintiffs' claims are governed by 29 U.S.C. §1001, *et seq.* (ERISA).

12           6.     The matter in controversy, exclusive of interest and costs, exceeds the sum of  
13 Seventy Five Thousand and No/100 (\$75,000.00) Dollars.

14                   **II. FACTUAL ALLEGATIONS FOR NAMED PLAINTIFF**

15           7.     The Plaintiff, Bonita K. Biery, was employed as a business analyst by The  
16 Boeing Company, in Seattle, Washington, for approximately 15 years until approximately June  
17 of 2001.

18           8.     During the time of Plaintiff's employment by Defendant Boeing, Plaintiff Biery  
19 became eligible to receive disability benefits, and premiums were paid out of her employee  
20 compensation to Defendant Boeing in consideration for the disability coverage. Defendant  
21 Boeing contracted with Defendant Aetna as to the determination, claim administration and/or  
22 payment of these disability benefits.

23           9.     Plaintiff Biery became afflicted with disabling conditions while she was

1 employed at Boeing. These conditions include, but are not limited to, Chronic Fatigue  
2 Syndrome and Fibromyalgia.

3 10. Plaintiff Biery is unable to work because she is disabled due to her medical  
4 conditions.

5 11. Plaintiff Biery is eligible to receive short-term disability and long-term disability  
6 benefits as an employee of Boeing until she reaches the age of 65 or returns to work.

7 12. Plaintiff Biery's disabling conditions have forced her into retirement. She  
8 qualified for benefits through the Social Security Administration.

9 13. On December 4, 2002, Defendant Aetna made its final refusal to pay Plaintiff  
10 Biery the disability benefits due to her.

11 14. Defendants conducted their claims review process in an arbitrary and capricious  
12 manner, which resulted in the denial of Plaintiff Biery's valid claims.

13 **III. CLASS ACTION ALLEGATIONS**

14 **A. Size and Definition of Proposed Class**

15 15. Plaintiff Biery was an employee of Defendant Boeing who has been wrongfully  
16 denied disability benefits by Defendant Aetna. Pursuant to FRCP 23(b)(1) Plaintiff Biery  
17 represents a numerous group (estimated to be between 250-500) of wrongfully denied plan  
18 members who have been subject to inappropriate claims adjustment practices and procedures  
19 perpetrated by Defendant Aetna while administering the Defendant Boeing's Long-Term  
20 Disability Plan. The proposed class of Plaintiffs includes all wrongfully denied claims from  
21 December 1998 through the filing of this suit.

22 **B. Plaintiff Biery is an Adequate Representative of the Class.**

23 16. Ms. Biery's claim for disability benefits was adjudicated by the Defendants in

1 the typical manner. As such, she is in a position to adequately represent all class members.

2 C. There Are Common Questions Of Law And Fact Making Class  
3 Certification Appropriate.

4 17. While administering the Plan, Defendants Boeing and Aetna breached  
5 numerous statutory duties, codified at 29 CFR §560, *et seq.*, including, but not limited to,  
6 failure to provide a full and fair review of the claims of disabled employees and breaching its  
7 fiduciary duties owed to members of the Employee Health and Welfare Benefit Plan. These  
8 breaches include imposing heightened requirements for claimant's proving disability that are  
9 not codified in the Employee Health and Welfare Benefit Plan, failing to fully collect all of  
10 claimant's medical records, and ignoring or overlooking opinions of treating physicians.  
11 Pursuant to FRCP 23(a)(3), Ms. Biery's claims are typical of all claimants denied disability  
12 benefits. Defendant Aetna took these actions in order to substantiate its adverse benefit  
13 decisions.

14 18. Pursuant to FRCP 23(a)(4), the Plaintiff Biery will represent the Class fairly and  
15 adequately protect the members of the Class.

16 IV. DAMAGES

17 19. Defendants' breach of duties owed to Plaintiff Biery, and all similarly situated  
18 Plaintiffs, denied said Plaintiffs the benefits defined under the ERISA Plan.

19 20. All Plaintiffs have express rights and standing under ERISA to bring a cause of  
20 action against the Defendants to enforce their rights to recover benefits due to them because of  
21 the disability coverage and to clarify their collective rights for future benefits under the terms  
22 of the Plan.

23 21. Under ERISA, Plaintiffs collectively have the right to recover their reasonable

1 attorneys' fees and costs of this action against Defendants should the Plaintiffs establish their  
2 right to recover benefits, including a full and fair review denied to them, collectively, by the  
3 Defendants.

4 **V. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for Judgment against Defendants that compensates the  
6 Plaintiffs for damages sustained as follows, to the extent they are not duplicative.

7 1. For an injunction terminating Aetna's current inappropriate claims adjudication  
8 practices and procedures, commonly employed to wrongfully deny Employee Health and  
9 Welfare Benefit Plan benefits to disabled Plan participants;

10 2. For declaratory judgment that the Court enforce the Defendants' continuing  
11 obligation owed to the Plaintiff's pursuant to the terms of the Plan and to restore Plaintiffs to  
12 inactive employees of Boeing so that they can receive employer-sponsored health insurance  
13 benefits;

14 3. All damages shown at trial which proximately flow from the Defendants'  
15 breach of contract, as set forth above;

16 4. For Plaintiffs' costs and disbursements incurred by bringing these causes of  
17 action, along with pre-judgment interest and any other relief permitted by law, which the Court  
18 deems just and equitable; and

19 5. For the Court to order the Defendant Aetna to reopen the administrative claims  
20 review process for a full and fair evaluation of Plaintiffs' claims.

21 DATED this 14<sup>th</sup> day of December, 2004.

22 NELSON TYLER LANGER, P.L.L.C.

23   
Frederick P. Langer, WSBA #25932  
Attorney for Plaintiffs